

1 CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation
2 COLLEEN MONAHAN
Deputy Commissioner
3 THERESA LEETS
Assistant Chief Counsel
4 MARISA I. URTEAGA-WATKINS (State Bar No. 236398)
Senior Counsel
5 Department of Financial Protection and Innovation
6 2101 Arena Blvd.
7 Sacramento, California 95834

8 Attorneys for Complainant

9 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

10 OF THE STATE OF CALIFORNIA

11 In the Matter of:)
)
12 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
13) CONSENT ORDER
Complainant,)
14 v.)
)
15 NOBIBI FRANCHISING, LLC., , NOBIBI)
16 CAPITAL PARTNERS, LLC., and B&N)
17 SUPPLIERS INTERNATIONAL INC.,)
)
18 Respondents.)
19)

20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Nobibi Franchising, LLC., Nobibi Capital Partners LLC, and B&N
22 Suppliers International Inc. collectively known as Nobibi) and together with Commissioner,
23 (Parties) and is made with respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (Department) and is responsible for administering and enforcing the Franchise
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1 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
2 in California. To register a franchise, a franchisor must file an application that includes a Franchise
3 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
4 31114. The FIL requires franchisors to disclose certain material information that is intended to
5 provide prospective franchisees with facts upon which to make an informed decision to purchase a
6 franchise, as stated in section 31001.

7 B. At all relevant times, Nobibi Franchising, LLC. was and is a California limited
8 liability company with a principal place of business located at 10479 Westchester Avenue, San
9 Diego, California 92126. At all relevant times, Nobibi Franchising, LLC. offers franchises to
10 California investors offering the production and sale of handcrafted frozen desserts made from fresh
11 fruit and ice cream. At all relevant times, Nobibi Capital Partners, LLC. and B&N Suppliers
12 International, Inc. are affiliates of Nobibi Franchising LLC. engaged in the offer of Nobibi
13 franchises to California investors.

14 C. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in
15 this state unless the offer has been registered with the Commissioner or is exempted.

16 1. From 2022 to 2023, Nobibi entered into at least two (2) franchise
17 agreements referred to as “license agreements” with California franchisees for the operation of
18 stores, using a system prescribed by Nobibi, at specific locations in California (California Store(s)).
19 Nobibi was not registered to offer and sell franchises by the Commissioner pursuant to the FIL from
20 2022 to 2023, at the time these agreements were executed.

21 D. Pursuant to section 31119, it is unlawful to sell any franchise without first providing a
22 prospective franchisee with the FDD at least fourteen (14) days prior to the execution of a franchise
23 agreement or receipt of consideration.

24 1. Nobibi executed at least two (2) franchise agreements referred to as
25 “license agreements” with two (2) California franchisee investors from 2022 to 2023. Nobibi did not
26 provide the two (2) with a new FDD for the second location at least fourteen (14) days prior to the
27 execution of a franchise agreement or receipt of consideration.

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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 E. The Commissioner finds that Nobibi offered and sold at least two (2) Nobibi
2 franchises in California without being registered with the Commissioner or exempt, in violation of
3 section 31110.

4 F. The Commissioner finally finds that Nobibi failed to provide an FDD to a prospective
5 or actual franchisee at least 14 days prior to the execution of a franchise agreement or receipt of
6 consideration on at least two (2) occasions, in violation of section 31119.

7 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
8 forth herein, the Parties agree as follows:

9 **II.**

10 **TERMS AND CONDITIONS**

11 1. Purpose. This Consent Order resolves the issues before the Commissioner,
12 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
13 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
14 and provisions of the applicable law.

15 2. Desist and Refrain Order. Pursuant to section 31406, Nobibi Franchising, LLC.,
16 Nobibi Capital Partners LLC, and B&N Suppliers International Inc. are hereby ordered to desist and
17 refrain from the violations set forth herein, in violation of Corporations Code sections 31110,
18 31119, and from any violations of the Franchise Investment Law. The issuance of this order is
19 necessary, in the public interest, for the protection of investors, and is consistent with the purposes,
20 policies, and provisions of the Franchise Investment Law.

21 3. Penalties. Nobibi Franchising, LLC., Nobibi Capital Partners LLC, and B&N
22 Suppliers International Inc., shall pay jointly an administrative penalty of eight thousand dollars
23 (\$8,000.00) (Penalties) no later than fifteen (15) days after the Effective Date of this Consent Order
24 as defined in paragraph 21 (Effective Date). The Penalties must be made payable in the form of a
25 cashier's check or Automated Clearing House deposit to the Department and transmitted to the
26 attention of Accounting-Legal at the Department of Financial Protection and Innovation, 2101 Arena
27 Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently sent via
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1 email to marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay Penalties in a timely manner shall be
2 deemed to be a material breach of this Consent Order.

3 4. Waiver of Hearing Rights. Nobibi acknowledges that the Commissioner is ready,
4 willing, and able to proceed with the filing of an administrative enforcement action on the charges
5 contained in this Consent Order. Nobibi hereby waives the right to any hearings, and to any
6 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
7 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law. Nobibi
8 further expressly waives any requirement for the filing of any accusation pursuant to Government
9 Code section 11415.60, subdivision (b). By waiving such rights, Nobibi effectively consents to this
10 Consent Order and all of its terms becoming final.

11 5. Failure to Comply with Consent Order or Cure Breach. Nobibi agrees that if it fails
12 to comply with the Desist and Refrain Order in this Consent Order, or fails to timely cure any
13 breach to the satisfaction of the Commissioner, the Commissioner may, in addition to all other
14 available remedies it may invoke under the FIL, summarily suspend, revoke, or deny its FIL
15 registration (if applicable). Nobibi stipulates to the finality of any such FIL registration
16 suspensions, revocations, or denials that the Commissioner may order. Nobibi waives any notice
17 and hearing rights to contest such summary suspensions, revocations, or denials which may be
18 afforded under the FIL, the California Administrative Procedure Act, the California Code of Civil
19 Procedure, or any other provision of law in connection therewith.

20 6. Information Willfully Withheld or Misrepresented. This Consent Order may be
21 revoked, and the Commissioner may pursue any and all remedies available under law against
22 Nobibi, if the Commissioner discovers that Nobibi knowingly or willfully withheld or
23 misrepresented information used for and relied upon in this Consent Order.

24 7. Future Actions by Commissioner. If Nobibi fails to comply with any terms of the
25 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
26 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions
27 against NF, or any of its partners, owners, officers, shareholders, directors, employees, or successors
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1 for any and all unknown violations of the FIL or any other law under the Commissioner’s
2 jurisdiction.

3 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
4 ability to assist any other government agency (whether city, county, state, or federal) with any
5 administrative, civil, or criminal action brought by that agency against Nobibi, or any other person
6 based upon any of the activities alleged in this matter or otherwise.

7 9. Headings. The headings to the paragraphs of this Consent Order are inserted for
8 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
9 the provisions hereof.

10 10. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
11 interest.

12 11. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
13 Consent Order, it has relied solely on the statements set forth herein and the advice of its own
14 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
15 Order, it has placed no reliance on any statement, representation, or promise of any other party, or
16 any other person or entity not expressly set forth herein, or upon the failure of any party or any
17 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
18 The Parties have included this clause: (1) to preclude any claim that any party was in any way
19 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
20 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

21 12. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
22 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
23 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
24 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
25 or provision of this Consent Order by the other Party will be considered a waiver of any other
26 condition or provision or of the same condition or provision at another time.

27 13. Full Integration. This Consent Order is the final written expression and the complete
28 and exclusive statement of all the agreements, conditions, promises, representations, and covenant

1 between the Parties with respect to the subject matter hereof, and supersedes all prior or
2 contemporaneous agreements, negotiations, representations, understandings, and discussions
3 between and among the Parties, their respective representatives, and any other person or entity with
4 respect to the subject matter covered hereby.

5 14. Governing Law. This Consent Order will be governed by and construed in
6 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such
7 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
8 inconvenient forum to the maintenance of such action or proceeding in such court.

9 15. Counterparts. This Consent Order may be executed in one or more separate
10 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
11 together constitute a single document.

12 16. Effect Upon Future Proceedings. If Nobibi applies for any license, registration,
13 permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of
14 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
15 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

16 17. Voluntary Agreement. Nobibi enters into this Consent Order voluntarily and without
17 coercion and acknowledges that no promises, threats, or assurances have been made by the
18 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
19 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
20 and without any duress or undue influence of any kind from any source.

21 18. Notice. Any notice required under this Consent Order shall be provided to each
22 party at the following addresses:

23 To Nobibi: Brett M. Buterick, Esq.
24 The Franchise Firm, LLP.
25 225 Wilmington West Chester Pike, Suite 200
26 Chadds Ford, Pennsylvania 19317
27 brett@thefranchisefirm.com

28 To the Commissioner: Marisa I. Urteaga-Watkins, Esq.
Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, California 95834

marisa.urteaga-watkins@dfpi.ca.gov

19. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an original signature.

20. Public Record. Nobibi hereby acknowledges that this Consent Order is and will be a matter of public record.

21. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to Nobibi’s agent, Brett M. Buterick, Esq. at brett@thefranchisefirm.com.

22. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: 3/1/2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

By: _____
COLLEEN MONAHAN
Deputy Commissioner

Dated: 2/27/2024

NOBIBI FRANCHISING, LLC.

By: _____
YEN PHAM
Chief Executive Officer

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Dated: 2/27/2024

NOBIBI CAPITAL PARTNERS LLC

By: _____
YEN PHAM
Chief Executive Officer

Dated: 2/27/2024

B&N SUPPLIERS INTERNATIONAL INC.

By: _____
SHIRLEY SHINN
Chief Executive Officer